

# **EXHIBIT 6**

## UNITED STATES BANKRUPTCY COURT

SOUTHERN

District of

NEW YORK

In re THE GATEWAY DEVELOPMENT GROUP, INC.

Debtor

Case No. 21-22304 (SHL)

(Complete if issued in an adversary proceeding)

Chapter 7

Howard P. Magaliff, Trustee &amp; James Carnicelli Jr

Plaintiff

v.

Adv. Proc. No. 21-7093

John J. Fareri, et al.

Defendant

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Fred Stevens, Esq., Kledstadt LLP, 200 West 41st Street, 17th Floor, New York, NY 10036

(Name of person to whom the subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A attached.

PLACE Pastore LLC, 4 High Ridge Park, Third Floor, Stamford, CT 06905	DATE AND TIME August 15, 2022
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
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The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: July 12, 2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)

James Carnicelli, Jr., who issues or requests this subpoena, are:

Joseph M. Pastore III, Pastore LLC, 4 High Ridge Park, 3FL, Stamford CT 06905, JPastore@Pastore.net, 203-658-8454

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☒ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

*(1) For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

*(2) For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

*(1) Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

*(2) Command to Produce Materials or Permit Inspection.*

*(A) Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

*(B) Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

*(3) Quashing or Modifying a Subpoena.*

*(A) When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

*(B) When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

*(C) Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

*(1) Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

*(A) Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

*(B) Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

*(C) Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

*(D) Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

*(2) Claiming Privilege or Protection.*

*(A) Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

*(B) Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

### Schedule A

YOU ARE COMMANDED to produce the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

1. All documents concerning or relating to any payments made by The Gateway Development Group, Inc. ("Development") to James Carnicelli, Jr. or John J. Fareri from 2014 to present.
2. All documents concerning the termination of James Carnicelli Jr.'s service as president of Development.
3. All documents concerning the suspension or cessation of Development's operations.
4. All transcripts from all depositions of interested parties, taken by you, over the course this matter including but not limited to, depositions taken of the following:
  - a. Development, through John J. Fareri;
  - b. John J. Fareri individually; and
  - c. Christopher Sheskier.
5. All documents related to any withdrawals from the New York State Tax Amnesty Program, including but not limited to the documents produced to you on January 4, 2022, as set forth in footnote 25 of the Examiner's Report.
6. All documents concerning or relating to any of the below construction projects ("Project"), including documents detailing loans or benefits of any kind requested or received by any party in connection with any such Project:
  - a. North 80 Project f/k/a North 60 Project, centrally located in the town of Mount Pleasant, New York.
  - b. 3030 Westchester Avenue, Purchase, New York.
  - c. 415 Greenwich Street, New York, New York.
  - d. 16 Old Track Road, Greenwich, Connecticut
  - e. The Harbour
  - f. 1162 East Putnam Avenue, Greenwich, Connecticut
  - g. 124 Temple Street
  - h. The Goshen Plaza, located in Goshen, New York
  - i. The Greenwich Office Park  
Located at 51 Weaver Street, Greenwich, Connecticut 06831.
  - j. The Project located at 415 Greenwich Ave, Greenwich, Connecticut 06830.
  - k. The Project located at 1162 E Putnam Avenue, Greenwich, Connecticut 06878.
  - l. The Project located at 124 Temple Street, New Haven, Connecticut 06510.
  - m. The Project located at 585 W. Putnam Avenue, Greenwich, Connecticut 06830.
  - n. The Project located at 500 W. Putnam Avenue, Greenwich, Connecticut 06830.

- o. The Project located at 240 Greenwich Avenue, Greenwich, Connecticut 06830.
- 7. All documents that you received from John J. Fareri or Christopher Sheskier, either directly or through their counsel, which were provided to you in anticipation of your preparation of the Examiner's Report.
- 8. All documents upon which you relied in the preparation of the document entitled "Report of Fred Stevens, Examiner, Dated January 25, 2022" (the "Examiner's Report") which was filed on January 25, 2022 in the *In Re: Gateway Kensington, LLC Bankruptcy*, Case No. 21-22274 (SHL).